

46428

SERVICE DATE – JUNE 5, 2018

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 6 (Sub-No. 496X)]

BNSF Railway Company—Abandonment Exemption—in the City of Des Moines, Polk County, Iowa

[Docket No. AB 290 (Sub-No. 400X)]

Norfolk Southern Railway Company—Discontinuance of Service Exemption—in the City of Des Moines, Polk County, Iowa

BNSF Railway Company (BNSF), and Norfolk Southern Railway Company (NSR) (collectively, Applicants), have jointly filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments and Discontinuances of Service for BNSF to abandon, and for NSR to discontinue service over, approximately 0.45 miles of rail line between milepost 67.38 and milepost 66.93 in the City of Des Moines, Polk County, Iowa (the Line). The Line traverses United States Postal Service Zip Code 50309.

Applicants have certified that: (1) no local rail traffic has moved over the Line for at least two years; (2) no overhead rail traffic has moved over the Line for at least two years; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year

period; and (4) the requirements at 49 C.F.R. § 1105.7(c) (environmental report), 49 C.F.R. § 1105.11 (transmittal letter), 49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment shall be protected under Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. § 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA)¹ has been received, these exemptions will be effective on July 5, 2018,² unless stayed pending reconsideration. Petitions to stay that do not involve environmental

¹ The Board modified its OFA procedures effective July 29, 2017. Among other things, the OFA process now requires potential offerors, in their formal expression of intent, to make a preliminary financial responsibility showing based on a calculation using information contained in the carrier's filing and publicly available information. See Offers of Financial Assistance, EP 729 (STB served June 29, 2017); 82 Fed. Reg. 30,997 (July 5, 2017).

² Applicants initially filed their verified notice of exemption on April 30, 2018. BNSF filed a supplemental certificate of service for the environmental and historic report on May 16, 2018. Therefore, the official filing date is May 16, 2018.

issues,³ formal expressions of intent to file an OFA under 49 C.F.R. § 1152.27(c)(2),⁴ and trail use/rail banking requests under 49 C.F.R. § 1152.29 must be filed by June 15, 2018. Petitions to reopen or requests for public use conditions under 49 C.F.R. § 1152.28 must be filed by June 25, 2018, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to Karl Morell, Karl Morell & Associates, 440 1st Street, N.W., Suite 440, Washington, DC 20001 and Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemptions are void ab initio.

Applicants have filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA issued an environmental assessment (EA) on May 25, 2018. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling OEA at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at

³ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemptions' effective date. See Exemption of Out-of-Serv. Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

⁴ Each OFA must be accompanied by the filing fee, which is currently set at \$1,800. See 49 C.F.R. § 1002.2(f)(25).

1-800-877-8339. Comments on environmental and historic preservation matters must be filed by June 11, 2018.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by BNSF's filing of a notice of consummation by June 5, 2019, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at WWW.STB.GOV.

Decided: May 31, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.